IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8899 OF 2004

Dilip Naik, Proprietor of
M/s.Arjay Chemicals & Colourants .. Petitioners.

Vs.

M/s.Shreyas Intermediates Ltd. .. Respondents.

Mr.V.R.Walavalkar with Mr.Sean Wasoodew for the petitioners.
Mr.Clive D'souza for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 30TH NOVEMBER, 2004

P.C.:

. Heard Mr.Walavalkar, learned counsel for the petitioners and Mr.D'souza, learned counsel for the respondents.

2. Rule, returnable forthwith.

3. Mr.D'souza, learned counsel waives service for the respondents. By consent of the parties taken up for the final hearing.

4. This petition is directed against the order

dated 27.8.2004 by which the application filed by the petitioners under Order 14 Rule 2(2) of the Code of Civil Procedure requesting to decide the issue of jurisdiction as preliminary issue has been dismissed by the trial court holding that reading of the plaint makes it clear that the issue of jurisdiction is a mixed question of law and fact such as whether factory of the plaintiffs situates at Khed or not and, whether there was any term to make payment by the defendant at Khed or not. Except these facts there does not seem to be any dispute over any other factual aspect in so far as issue of jurisdiction is concerned.

5. Mr.Walavalkar, learned counsel for the petitioners, at the outset submitted that though the petitioners have stated in their reply that they did not know whether the respondents' factory situate at Khed or not, he has instructions not to raise any dispute about its location and the petitioners accept that the factory situate at Khed. He further submitted that in so far as issue as to whether there was any term to make payment at Khed or not is concerned it could be solely decided on the basis of the document annexed to the plaint. According to Mr.Walavalkar, the documents produced

by the plaintiff alongwith the plaint clearly show that the transaction was subject to Mumbai jurisdiction and that the petitioners were to pay within 30 days from the date of delivery of the goods to Bank of Baroda, International Business Branch, Nariman Point. As against this Mr.D'souza, learned counsel for the respondents submitted that issue of jurisdiction can be disposed of as preliminay issue only in case where it can be disposed of as an issue of law and not otherwise. He placed reliance upon thejudgment of this court in **M/s.Sharddha Associates & Anr. Vs. St.Patrick's Town Co-operative Housing Society Ltd. & Ors. 2003 (1) ALL MR 674**.

6. I do not wish to express any opinion whatsoever on the submissions made by Mr.Walavalkar and leave it to the trial court to examine the same while deciding the issue of jurisdiction. However, from the perusal of the document placed on record by the respondents-plaintiffs, I am satisfied that issue of jurisdiction can be decided on the basis of the documents produced on record by the plaintiff and it does not require recording of any oral evidence. Keeping in view the peculiar facts and circumstances of this case the judgment in

M/s.Sharddha Associates & Anr. (supra) is of no avail to the respondents-plaintiffs.

7. Mr.Walavalkar, learned counsel for the petitioners further submitted that if the issue of jurisdiction is answered in the affirmative, the petitioners shall not carry the decision on the issue further and reserve their right to challenge the finding in the appeal, if the suit is decreed against them. His statement is accepted.

8. Keeping in view the peculiar facts and circumstances of the case I am satisfied that the following order will meet the ends of justice:-

(a) The learned Civil Judge, Senior Division, Ratnagiri will endeavour to decide issue no.3, namely, "whether this court has jurisdiction to try the suit" as preliminary issue as expeditiously as possible and preferrably within six weeks from today.

(b) The trial court shall decide the suit, if the issue is answered in the affirmative, as expeditiously as possible and preferrably within six months therefrom. The parties are directed to

co-operate to decide the preliminary issue and disposal of the suit within the time aforestated.

(c) Rule is made absolute. The impugned order is quashed and set aside. The petitioners to communicate this order to the trial court within one week from today.

. The writ petition is disposed of.

(D.B.Bhosale, J.)